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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,383	08/01/2003	Patricia A. Tumminia	IP 022824	4148

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EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/632,383	TUMMINIA, PATRICIA A.	
	Examiner	Art Unit	
	Bryon P. Gehman	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/14/03</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 15 (second occurrence) through 23 have been renumbered 16-24, respectively.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 2-3, 8-9 and 20-21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The language "flat top edge" in claims 2, 8 and 20, line 2 of each, is not found in the specification and is misleading, as the flat portion is not located at the top of anything with respect to the container or the blank. In lines 3 and 4 of claims 2 and 20 and line 3 of claim 3, it is indefinite how a horizontal plane other than the plane of the bottom panel contains the "flat top edge", which side flaps are not coplanar with the bottom panel in the container and normally coplanar in the blank form. In claims 3, 8, 9 and 21, line 2 of each, it is

indefinite what defines a "top point" of the horizontal score lines, as in both blank and container dispositions, the "top point" is no higher or lowermost. In claims 8 and 9, lines 3 and 4, respectively, "bottom point(s)" are again no higher in the blank configuration.

4. Claims 3, 8-9 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 3, lines 1-2, "score lines is arcuate" is ungrammatical. In line 2, "the arcuate score line" lacks antecedent basis for one score line. See also claim 21, line 2.

In claim 8, line 4, "the base line portions" lacks clear antecedent basis for such terminology. See also claim 9, lines 3 and 4.

In claim 9, line 2, "arcuate scores line" is ungrammatical and indefinite.

In claim 21, line 3, "the end flaps" lack antecedent basis.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 7 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Liman et al. (3,062,429). Disclosed is an open topped container formed from a unitary blank, comprising a bottom panel (2), opposing end walls (4 and 6, 4 and 6) foldably

attached to the bottom panel along opposing end score lines (10, 10), opposing side walls (3 and 5, 3 and 5) foldably attached to the bottom panel along opposing side score lines (9, 9), opposing side flaps (four occurrences of 7 and 8) foldably attached to the opposing side walls along side flap score lines (as shown), the two opposing score lines (9,9) being centrally positioned between the side flaps and inwardly spaced from base portions of the opposing end score lines so as to optimize space. It is not clear that the improved score lines are not those previously defined.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liman et al.. Official notice is taken that adhering corner flaps of paperboard containers employing adhesive or staples is old and well known. The particular size of the container and blank would not distinguish any patentable significance by the mere sizing.

9. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liman et al. in view of Fowler et al. (5,624,031). Fowler et al. disclose a blank to form a container including cut voids at the corners to improve folding at the corners. To modify

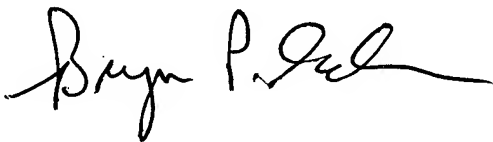
the blank of Liman et al. incorporating cut voids as taught by Fowler et al. would have been obvious in order to improve folding at the corners.

10. Claims 15-19 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elford (3,841,476) in view of Liman et al.. Elford discloses providing an open topped container from a unitary blank, comprising a bottom panel (11), opposing end walls (13, 13) foldably attached to the bottom panel along opposing end score lines (as shown), opposing side walls (12, 12) foldably attached to the bottom panel along opposing side score lines (as shown), and opposing side flaps (21, 22) foldably attached to the opposing side walls along side flap score lines. Liman et al. discloses a similar blank as explained above, including the two opposing score lines (9,9) being centrally positioned between side flaps and inwardly spaced from base portions of opposing end score lines so as to optimize space. To modify the blank of Elford employing the score line teaching of Liman et al. would have been obvious in order to optimize space.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is presently (703) 605-1174 and effective November 9, 2004, becomes (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached presently on (703) 308-2672 and after November 9, 2004 on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555 effective November 8, 2004.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG